

By: Representatives Baker, Sykes, Mickens,
Faulkner, Gibbs (36th), Paden

To: Judiciary A

HOUSE BILL NO. 1284

1 AN ACT TO CREATE THE "FRESH START ACT OF 2019"; TO PROVIDE
 2 THAT NO PERSON SHALL BE DISQUALIFIED FROM PURSUING, PRACTICING OR
 3 ENGAGING IN ANY OCCUPATION FOR WHICH A LICENSE IS REQUIRED SOLELY
 4 OR IN PART BECAUSE OF A PRIOR CONVICTION OF A CRIME, UNLESS THE
 5 CRIME FOR WHICH THE PERSON WAS CONVICTED DIRECTLY RELATES TO THE
 6 DUTIES AND RESPONSIBILITIES OF THE LICENSED OCCUPATION; TO
 7 PROHIBIT THE USE OF VAGUE TERMS SUCH AS "MORAL TURPITUDE," "GOOD
 8 CHARACTER" AND "ANY FELONY"; TO PROVIDE THAT WHEN PROMULGATING
 9 RULES AND REGULATIONS RELATED TO THE QUALIFICATIONS FOR LICENSURE,
 10 LICENSING AUTHORITIES SHALL ONLY CONSIDER CRIMINAL RECORDS THAT
 11 ARE SPECIFIC AND DIRECTLY RELATED TO THE DUTIES AND
 12 RESPONSIBILITIES OF THE LICENSED OCCUPATION; TO ESTABLISH A CLEAR
 13 AND CONVINCING STANDARD OF PROOF WHEN DETERMINING WHETHER A PERSON
 14 WILL BE DENIED A LICENSE; TO AUTHORIZE A PERSON WITH A CRIMINAL
 15 RECORD TO PETITION A LICENSING AUTHORITY AT ANY TIME FOR A
 16 DETERMINATION OF WHETHER THE PERSON'S CRIMINAL RECORD WILL
 17 DISQUALIFY THAT PERSON FROM OBTAINING A LICENSE; AND FOR RELATED
 18 PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 **SECTION 1.** (1) This act shall be known and may be cited as
 21 the "Fresh Start Act of 2019."

22 **SECTION 2.** The following words and phrases shall have the
 23 meanings as defined in this section unless the context clearly
 24 indicates otherwise:

25 (a) "Criminal record" shall mean any type of felony or
 26 misdemeanor conviction.



27 (b) "Licensing" shall mean any required training,
28 education, or fee to work in a specific profession.

29 (c) "Licensing authority" shall mean an agency,
30 examining board, credentialing board, or other office with the
31 authority to impose occupational fees or licensing requirements on
32 any profession.

33 **SECTION 3.** Absent applicable state law, no person shall be
34 disqualified from pursuing, practicing, or engaging in any
35 occupation for which a license is required solely or in part
36 because of a prior conviction of a crime, unless the crime for
37 which an applicant was convicted directly relates to the duties
38 and responsibilities for the licensed occupation.

39 **SECTION 4.** (1) Absent applicable state law, licensing
40 authorities shall not have in any rulemaking for their
41 qualifications for licensure vague or generic terms including, but
42 not limited to, "moral turpitude," "any felony," and "good
43 character." Absent applicable state law, licensing authorities
44 may only consider criminal records that are specific and directly
45 related to the duties and responsibilities for the licensed
46 occupation when evaluating applicants.

47 (2) The licensing authority shall use the clear and
48 convincing standard of proof in examining the factors to determine
49 whether an applicant with a disqualifying criminal conviction will
50 be denied a license. Absent applicable state law, the licensing



51 authority shall make their determination based on the following
52 factors:

53 (a) The nature and seriousness of the crime for which
54 the individual was convicted;

55 (b) The passage of time since the commission of the
56 crime;

57 (c) The relationship of the crime to the ability,
58 capacity, and fitness required to perform the duties and discharge
59 the responsibilities of the occupation; and

60 (d) Any evidence of rehabilitation or treatment
61 undertaken by the individual that might mitigate against a direct
62 relation.

63 (3) All licensing authorities shall meet the requirements
64 listed in subsection (1) by one hundred twenty (120) days after
65 the enactment of this act.

66 (4) For licensing authorities, the requirements listed in
67 subsections (1) and (2) also apply to any new occupational
68 licenses created after July 1, 2019.

69 (5) The licensing authority shall adopt necessary rules for
70 the implementation of this section.

71 **SECTION 5.** (1) An individual with a criminal record may
72 petition a licensing authority at any time for a determination of
73 whether the individual's criminal record will disqualify the
74 individual from obtaining a license. This petition shall include
75 details on the individual's criminal record. The licensing



76 authority shall inform the individual of his standing within
77 thirty (30) days of receiving the petition from the applicant.
78 The board may charge a fee to recoup its costs not to exceed
79 Twenty-five Dollars (\$25.00) for each petition.

80 (2) If a licensing authority denies an individual a license
81 solely or in part because of the individual's prior conviction of
82 a crime, the licensing authority shall notify the individual in
83 writing of the following:

84 (a) The grounds and reasons for the denial or
85 disqualification;

86 (b) That the individual has the right to a hearing to
87 challenge the licensing authority's decision;

88 (c) The earliest date the person may reapply for a
89 license; and

90 (d) That evidence of rehabilitation may be considered
91 upon reapplication.

92 (3) If an applicant's criminal history does not require a
93 denial of a license under applicable state law, any written
94 determination by the licensing authority that an applicant's
95 criminal conviction is directly related to the duties and
96 responsibilities for the licensed occupation must be documented in
97 written findings for each of the preceding factors under
98 subsection (2) by clear and convincing evidence sufficient for a
99 reviewing court.



100 (4) In any administrative hearing or civil litigation
101 authorized under this section, the licensing authority shall carry
102 the burden of proof on the question of whether the applicant's
103 criminal conviction directly relates to the occupation for which
104 the license is sought.

105 (5) The licensing authority shall adopt necessary rules for
106 the implementation of this section.

107 **SECTION 6.** This act shall take effect and be in force from
108 and after July 1, 2019.

